



0000151210

## BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

2014 FEB 14 P 3:28

AZ CORP COMMISSION  
DOCKET CONTROL

ORIGINAL

BOB STUMP - Chairman  
 GARY PIERCE  
 BRENDA BURNS  
 BOB BURNS  
 SUSAN BITTER SMITH

In the matter of:

DOCKET NO. S-20867A-12-0459

TRI-CORE COMPANIES, LLC an Arizona  
 limited liability company,

Arizona Corporation Commission

DOCKETED

FEB 14 2014

TRI-CORE MEXICO LAND DEVELOPMENT,  
 LLC, an Arizona limited liability company,

TRI-CORE BUSINESS DEVELOPMENT, LLC,  
 an Arizona limited liability company,

ERC COMPACTORS, LLC, an Arizona limited  
 liability company,

ERC INVESTMENTS, LLC, an Arizona limited  
 liability company,

C&D CONSTRUCTION SERVICES, INC. a  
 Nevada corporation,

PANGAEA INVESTMENT GROUP, LLC, an  
 Arizona limited liability company, d/b/a Arizona  
 Investment Center,

JASON TODD MOGLER, an Arizona resident,

BRIAN N. BUCKLEY and CHERYL BARRETT  
 BUCKLEY, husband and wife,

CASIMER POLANCHEK, an Arizona resident,

NICOLE KORDOSKY, an Arizona resident,

Respondents.

DOCKETED BY

**ELEVENTH**  
**PROCEDURAL ORDER**  
 (Grants Motion to Withdraw/  
 Mogler Entities  
 and  
 Grants Mogler Entities Request  
 for Continuance)

**BY THE COMMISSION:**

On November 8, 2012, the Securities Division ("Division") of the Arizona Corporation  
 Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Tri-Core  
 Companies, LLC, ("Tri-Core"); Tri-Core Mexico Land Development, LLC ("TC Mexico"); Tri-Core

1 Business Development, LLC ("TC Business"); ERC Compactors, LLC ("ERC Compactors"); ERC  
2 Investments, LLC ("ERC Investments"); C&D Construction Services, Inc. ("C&D"); Pangaea  
3 Investment Group, LLC ("Pangaea"), d/b/a Arizona Investment Center ("AIC"); Jason Todd Mogler;  
4 Brian N. Buckley and Cheryl Barrett Buckley, husband and wife; Casimer Polanchek; and Nicole  
5 Kordosky (collectively "Respondents"). In the Notice, the Division alleged multiple violations of the  
6 Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of  
7 notes.<sup>1</sup>

8 The Respondents were duly served with a copy of the Notice.

9 On November 26, 2012, a request for hearing in this matter was filed on behalf of C&D.

10 On November 30, 2012, Respondents Tri-Core, TC Business, ERC Compactors, ERC  
11 Investments, Jason Todd Mogler, Brian N. Buckley and Cheryl Barrett Buckley filed requests for  
12 hearing.

13 On December 10, 2012, by Procedural Order, a pre-hearing conference was scheduled on  
14 January 15, 2013.

15 On January 15, 2013, at the pre-hearing conference, Respondents Tri-Core, TC Business,  
16 ERC Compactors, ERC Investments, and Jason Mogler appeared through counsel. Respondents  
17 Brian and Cheryl Buckley appeared on their own behalf. The Division also appeared through  
18 counsel. Although the parties who requested a hearing were discussing a possible resolution of the  
19 proceeding, the Division requested a status conference be scheduled to determine if a hearing should  
20 be scheduled in the event settlement did not occur.

21 On January 16, 2013, by Procedural Order, a status conference was scheduled on March 20,  
22 2013.

23 On January 29, 2013, Respondent Nicole Kordosky filed a request for hearing.

24 On January 31, 2013, by Procedural Order, Respondent Nicole Kordosky's name was added  
25

---

26 <sup>1</sup> On February 6, 2013, the Commission issued Decision Nos. 73666 and 73667 against Pangaea and TC Mexico,  
27 respectively, as Default Orders finding them in violation of the Act. On May 8, 2013, the Commission issued Decision  
28 No. 73867, a Default Order, against Respondent Polanchek finding him in violation of the Act. On October 25, 2013, the  
Commission issued Decision No. 71447, a Consent Order, against the Buckley Respondents finding him in violation of  
the Act, and holding the Buckylys' marital community liable. On January 7, 2014, the Commission issued Decision No.  
74251, a Consent Order, against Respondent Kordosky.

1 to the service list and she was apprised of the status conference scheduled for March 20, 2013.

2 On March 20, 2013, at the status conference, the Division appeared through counsel,  
3 Respondents Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler appeared  
4 through counsel, Respondent C&D appeared through counsel, and Respondents Brian Buckley and  
5 Nicole Kordosky appeared on their own behalf. Mrs. Buckley did not appear. The Division's  
6 counsel indicated that while discussions to resolve the issues raised by the Notice were ongoing, a  
7 hearing should be scheduled in the fall to avoid scheduling conflicts in a lengthy proceeding because  
8 there would be approximately 12 Division witnesses and voluminous exhibits. Additionally, one of  
9 the attorneys who represents the Respondents indicated that he would call a like number of witnesses.

10 On March 21, 2013, by Procedural Order, a hearing was scheduled to commence on October  
11 7, 2013 and last over a number of weeks.

12 On April 4, 2013, the Division filed a Motion to Continue ("Motion") the hearing due to the  
13 unavailability of a key witness during the scheduled hearing. The Division requested that the  
14 proceeding be continued to October 21, 2013, and that the remaining dates of the hearing also be  
15 rescheduled. The Division further indicated that counsel for the Respondents who were represented  
16 as well as the pro per Respondents in the proceeding had been contacted concerning the Division's  
17 Motion and that they had no objections to the Motion.

18 On April 24, 2013, by Procedural Order, the Division's Motion was granted and the hearing  
19 was continued to October 21, 2013.

20 On September 11, 2013, the Division filed a Motion to Allow Telephonic testimony of  
21 approximately six witnesses who mostly reside out of state. There were no objections to this motion.

22 On September 20, 2013, the Division filed a Stipulation to Partially Continue the Hearing  
23 Dates because counsel for the majority of the Respondents recently informed the Division that he had  
24 a conflict with a criminal matter in which he is counsel of record and that proceeding had been set for  
25 an eight to ten week trial which was to commence on November 5, 2013. The Division further stated  
26 that the judge in that proceeding has refused to continue the criminal trial in deference to the  
27 Commission's proceeding. Additionally, the Division stated that the parties had agreed to proceed  
28 with the first two weeks of hearing scheduled in October 2013 and to continue the remaining three

1 weeks scheduled in November 2013 to February or March 2014 with the majority of the Respondents  
2 represented by the affected counsel presenting their case in chief at that time.

3 On October 4, 2013, by Procedural Order, telephonic testimony was authorized to be utilized  
4 in the proceeding. Additionally, a portion of the proceeding was continued as agreed by the parties to  
5 February, 2014.

6 On October 21, 2013, a full public hearing was convened before a duly authorized  
7 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division, Tri-  
8 Core, TC Business, ERC Compactors, ERC Investments, Jason Mogler and C&D appeared with  
9 counsel. Ms. Kordosky appeared on her own behalf. The hearing also proceeded as scheduled on  
10 October 22, 2013, with the presentation of evidence by the Division.

11 On October 23, 2013, at the beginning of the proceeding, Mr. Bobby Thrasher, counsel for  
12 Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler stated that an issue  
13 had arisen with respect to his continued representation of ERC Compactors and ERC Investments  
14 ("ERC Entities"). Counsel related that the ERC Entities which he was representing were in fact sold  
15 by Respondent Mogler in March 2013 to a non-party to the proceeding, Mr. Guy Quinn. As evidence  
16 of this sale, Mr. Thrasher provided a copy of the Purchase Contract. However, it did not appear to be  
17 either complete or the final agreement with pages numbered consecutively. Counsel stated further  
18 that although he had initially represented the ERC Entities, he believed that a clear conflict of  
19 interests existed, and that he could no longer represent these companies without prejudice to them  
20 and their new owner. Mr. Thrasher further indicated that he wished to file a Motion to Withdraw as  
21 counsel for the ERC Entities, and he also requested that the balance of the proceeding be continued  
22 and resume in the February proceeding, as previously ordered.

23 Counsel for the Division indicated that she had been unaware of this conflict previously, and  
24 had only been apprised of this situation shortly before the hearing on October 23, 2013, and had been  
25 surprised by these requests.

26 After a recess, the parties agreed that the proceeding should be continued to February and that  
27 a Motion to Withdraw and a Motion for a Procedural Conference be filed as discussed at the hearing.  
28

1 On October 25, 2013, the Division filed a Motion for a Procedural Conference and indicated  
2 that copies of the following documents were e-mailed to Mr. Quinn: the Notice; documents related to  
3 the representation of the ERC Entities filed by Mr. Thrasher; and a copy of the Sixth Procedural  
4 Order which scheduled the matter for further hearing on February 3, 2014.

5 The Division further requested that certain time deadlines be established with respect to the  
6 future representation of the ERC Entities and requested that other procedural matters be addressed at  
7 the Procedural Conference.

8 On November 1, 2013, Mr. Bobby Thrasher filed a Motion to Withdraw as Counsel of Record  
9 for the ERC Entities due to the change in ownership and for other reasons disclosed on the record at  
10 the October 23, 2013 hearing. No objections have been filed to this motion.

11 On November 19, 2013, by Procedural Order, the Motion to Withdraw by Mr. Bobby  
12 Thrasher was granted conditioned upon a copy of the complete and final Purchase Contract being  
13 filed. Additionally, a lawful representative or counsel for the ERC Entities was ordered to enter an  
14 appearance in this matter if they were going to participate further in the proceeding and contest the  
15 Notice.

16 On December 6, 2013, an Arizona attorney filed a letter on behalf of the ERC Entities and  
17 stated that no appearance would be entered on behalf for the ERC Entities and that the current  
18 manager of these Respondents "was not in control of the entities during the relevant time frame."  
19 Further, the attorney went on to state that a resolution of the matter was being sought with the  
20 Commission.

21 On December 12, 2013, at the procedural conference, the Division and Tri-Core, TC Business  
22 and Mr. Mogler were represented by counsel. No appearance was made on behalf of C&D or any  
23 remaining Respondents. The Purchase Contract for the ERC Entities was further discussed, and  
24 counsel for Tri-Core, TC Business and Mr. Mogler indicated that he would be seeking discovery with  
25 respect to the Division investigator's notes, logs and reports beyond the documentary material  
26 disclosed by the Division with the exchange of Exhibits and Witness Lists as ordered previously. Mr.  
27 Thrasher agreed that he would pursue the material he required by filing for a subpoena by December  
28 17, 2013, and the Division's counsel agreed to file a response by January 6, 2014.

1 On December 17, 2013, counsel for Tri-Core, TC Business and Mr. Mogler filed what was  
2 captioned "Application for Issuance of Subpoena for Documents to Arizona Corporation Securities  
3 Division" ("Application"). Therein counsel requested "an unredacted copy of the investigative file."  
4 The only documents excluded from the Application were those documents previously provided to the  
5 Respondents in the Division's List of Exhibits and Witnesses pursuant to stipulation on August 26,  
6 2013.<sup>2</sup>

7 On December 31, 2013, the Division filed its Response in Opposition ("Response") to the  
8 Application by Tri-Core, TC Business and Mr. Mogler. The Division stated that on October 31, 2013,  
9 it had advised Respondents' counsel the procedures necessary to obtain discovery from the Division,  
10 and that Respondents' counsel had delayed until December 17, 2013, to file their request in this  
11 proceeding.

12 The Division stated that the action herein is governed by the Commission's Rules A.A.C.  
13 R14-3-101, et seq. and the Administrative Procedures Act, A.R.S. § 41-1001, et seq. ("APA"). The  
14 Division argued that the Respondents had been provided with thousands of documents along with its  
15 list of witnesses prior to the commencement of the hearing and that Respondents' Application neither  
16 complied with the Commission's Rules nor the APA. The Division stated that Respondents failed to  
17 meet their burden to show "reasonable need" before a subpoena would issue for the production of  
18 documents. The Division detailed how Respondents had produced more than 30,000 documents to  
19 the Division and the majority of them were admitted into evidence through the Division's  
20 investigator. These documents contained no surprises and Respondents had the opportunity to  
21 conduct their own investigation prior to the start of the hearing. The Division further stated that no  
22 specific prejudice was set forth in the Application and that Respondent's "due process" rights were  
23 not violated. Additionally, the Division argued that it was not required to provide privileged or  
24 confidential documents, and cited a plethora of cases in support of its position that Respondents had  
25 either not shown a substantial need or that they could not obtain the information elsewhere. Lastly,  
26 the Division cited A.R.S. § 44-2042, the Commission's confidentiality statute, arguing that all  
27 information or documents acquired by the Division during its investigation were confidential unless  
28

---

<sup>2</sup> In the exchange, the Division provided Respondents with in excess of 250 Exhibits.

1 the presiding judge authorized their disclosure. In conclusion, the Division argued that the  
2 Application was overbroad, unduly burdensome, untimely and that it constituted a "stall tactic" after  
3 considering the timeline in the proceeding.

4 Respondents Tri-Core, TC Business and Mr. Mogler did not file a reply to the Response.

5 On January 16, 2014, by Procedural Order, the Application was denied because it was not  
6 timely and the Respondents had not shown a reasonable or substantial need for the documents, and  
7 they failed to show why the confidentiality of the documents should not be maintained pursuant to  
8 A.R.S. § 44-2042.

9 On January 22, 2014, counsel for C&D filed a Motion to Withdraw as counsel for C&D citing  
10 A.A.C. R14-3-104(E) which permits the withdrawal of an attorney upon good cause being shown.  
11 Pursuant to Rule 42 of the Rules of the Arizona Supreme Court, counsel cited Ethical Rule ("ER")  
12 1.16 which governs the termination of representation. Counsel stated "C&D has failed to  
13 substantially fulfill its obligations" to counsel by failing to make payments for its defense in this  
14 complex proceeding. It was further stated that this was placing an unreasonable financial burden on  
15 counsel who, after warning to C&D, was requesting permission to withdraw from the proceeding as  
16 C&D's counsel. Counsel further represented that C&D had been served with a copy of the motion  
17 and had been advised when the proceeding was to resume.

18 A Motion to Continue the February 3, 2014, hearing was also filed on January 22, 2014, by  
19 counsel for Tri-Core, TC Business and Mr. Mogler. Therein, counsel requested a 30 to 45 day  
20 continuance or another date convenient to the Commission for the remaining portion of the  
21 proceeding which was presently scheduled to be heard on various dates between February 3, 2014  
22 and February 20, 2014. Counsel requested this continuance due to a conflict which had arisen with a  
23 criminal proceeding which he was involved in at the Maricopa County Superior Court. The criminal  
24 case had been rescheduled to commence on February 4, 2014. Counsel represented that the criminal  
25 proceeding was scheduled for a four to six day jury trial which would take it into the second week of  
26 the Commission's ongoing proceeding.

27 On January 24, 2014, the Division filed responses to each of the pending motions by counsel  
28 for C&D and by counsel for Tri-Core, TC Business and Mr. Mogler. With respect to the Motion to

1 Withdraw, the Division argued that the motion was not timely since apparently nonpayment had been  
2 at issue for at least nine months, and additionally, C&D should not be granted any further  
3 continuances whether it was represented or not.

4 With respect to the Motion to Continue the February 3, 2014 hearing, the Division argued that  
5 the proceeding was continued previously due to a conflict of interest of counsel and that a hearing  
6 with an expected duration of three weeks could not easily be rescheduled. According to the  
7 Division's counsel, its representative attended the court's scheduling conference and that counsel for  
8 Tri-Core, TC Business and Mr. Mogler did not "raise the conflict with this administrative hearing."  
9 However, in the Motion to Continue, counsel stated, "Pursuant to local rule, a criminal trial has  
10 priority over an administrative hearing." The Division argued further that the "better part of two  
11 weeks" would remain of the presently scheduled administrative hearing with no conflict. However,  
12 this could lead to a further fragmentation of the proceeding if the matter was not concluded by the  
13 end of February.

14 On January 28, 2014, by Procedural Order, the Motion to Withdraw by counsel for C&D was  
15 granted. With respect to the Motion for a Continuance by counsel for Tri-Core, TC Business and Mr.  
16 Mogler, a brief continuance to February 18, 2014 was granted.

17 On January 31, 2014, Mr. Bobby Thrasher filed what he represented was the final Purchase  
18 Contract for the ERC Entities to comply with the Commission's Seventh Procedural Order. In  
19 addition, Mr. Thrasher filed what was captioned Notice to Withdraw [Sic] ("Notice of Withdrawal")  
20 with respect to his remaining clients/Respondents in the proceeding, Tri-Core, TC Business and Mr.  
21 Mogler (the "Mogler Entities") for what he termed a "conflict of interests that currently exist or have  
22 the potential to exist." He provided Mr. Mogler's address, and the pleading was also signed by Mr.  
23 Mogler, but the character of the "conflict" was not explained further.

24 On February 3, 2014, the Division filed its response to Mr. Thrasher's Notice of Withdrawal  
25 questioning the timing of his filing and whether it would "prejudice the judicial process and delay the  
26 hearing" scheduled to resume on February 18, 2014. The Division argued that no good cause had  
27 been shown to permit an authorization for Mr. Thrasher to withdraw pursuant to A.A.C. R14-3-  
28 104(E), and that his filing was merely a delaying tactic. The Division argued that the Notice of



1 Withdrawal should be denied if it delayed the February 18<sup>th</sup> resumption of the hearing in any way.  
2 Concluding its arguments, the Division stated that the Mogler Entities “should not be allowed to  
3 continue any of the scheduled hearing dates whether represented or not.”

4 On February 6, 2014, Mr. Mogler on behalf of himself and the Mogler Entities appearing *pro*  
5 *se* filed a Motion to Continue the February 18, 2014, hearing for a period of 45 days “or other such  
6 date that is convenient with the Court.” Mr. Mogler stated that he was requesting a short delay after  
7 the Division concludes its case to present the Mogler Entities’ defense in the proceeding against the  
8 Division’s allegations. He stated that he would need only two days to present this defense. It did not  
9 appear that he wished to delay the Division’s presentation of its case in chief.

10 On February 7, 2014, by Procedural Order, Mr. Thrasher’s withdrawal of representation from  
11 the ERC Entities was granted unconditionally. It was further ordered that Mr. Thrasher’s Notice of  
12 Withdrawal from his representation of the Mogler Entities would require further explanation to  
13 establish good cause for his withdrawal and that Mr. Mogler’s Motion to Continue required further  
14 explanation also. It was also ordered that a procedural conference be held on February 13, 2014.

15 On February 13, 2014, Attorney Thrasher filed a reply to the Division’s response to his Notice  
16 of Withdrawal setting forth more fully his reasons for requesting permission to withdraw from his  
17 representation of the Mogler Entities and cited ER 1.7 with respect to the possible conflicts between  
18 his clients and himself.

19 At the procedural conference, on February 13, 2014, the Division appeared through counsel  
20 and Mr. Thrasher and Mr. Mogler also appeared. Mr. Thrasher explained that he had been in contact  
21 with both independent counsel and the ethics counsel for the Arizona State Bar to discuss the conflict  
22 issues which have arisen for him and his inability to secure the signatures of the other three members  
23 of Mr. Mogler’s two limited liability companies to a Joint Representation Agreement in order to  
24 comply with ER 1.7(b) in the event future issues regarding a conflict of interests arise. Mr. Thrasher  
25 has made repeated attempts to secure these signatures, but these other members of the two limited  
26 liability companies have failed to respond to his requests. As a result, he filed his Notice of  
27 Withdrawal.

28 With respect to Mr. Mogler’s Motion to Continue, he made clear that he does not wish to

1 delay the Division's presentation of its case, but is requesting a brief continuance in order for him to  
2 prepare the Mogler Entities' defense to the Division's evidence. Towards that end, Mr. Mogler  
3 estimates the defense will take two days. Accordingly, leave should be granted for Mr. Thrasher to  
4 withdraw from his representation of the Mogler Entities and a brief continuance should be granted in  
5 order that the Mogler Entities can prepare their defense.

6 IT IS THEREFORE ORDERED that Mr. Thrasher's Notice of Withdrawal as counsel for the  
7 Mogler Entities is hereby granted.

8 IT IS FURTHER ORDERED that the proceeding shall recommence on **February 18, 2014,**  
9 **at 10:00 a.m.,** at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2,  
10 Phoenix, Arizona, as previously ordered.

11 IT IS FURTHER ORDERED that the parties shall reserve **February 19, 20, 24, 25, 26, and**  
12 **27, 2014,** for additional days of hearing, if necessary for the presentation of the Division's evidence.

13 IT IS FURTHER ORDERED that the parties shall reserve **May 6, 7, and 8, 2014,** if  
14 necessary, for the presentation of the Mogler Entities' defense.

15 IT IS FURTHER ORDERED that **if the parties reach a resolution of the issues raised in**  
16 **the Notice prior to the hearing, the Division shall file a Motion to Vacate the proceeding.**

17 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
18 Communications) is in effect and shall remain in effect until the Commission's Decision in this  
19 matter is final and non-appealable.

20 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules  
21 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission  
22 *pro hac vice*.

23 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance  
24 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
25 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances  
26 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is  
27 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the  
28 Administrative Law Judge or the Commission.

IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter, amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

DATED this 14<sup>th</sup> day of February, 2014.

  
MARC E. STERN  
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 14<sup>th</sup> day of February, 2014 to:

**Bobby O. Thrasher, Jr.**  
**THRASHER JEMSEK**  
**530 East McDowell Road, Suite 107-495**  
**Phoenix, AZ 85004**  
**Attorneys for Tri-Core Companies,**  
**LLC, Tri-Core Business Development, LLC,**  
**and Jason Todd Mogler**

**Jason Mogler**  
**Tri-Core Companies, LLC**  
**Tri-Core Business Development, LLC**  
**8800 East Chaparral, Suite 270**  
**Scottsdale, AZ 85250**

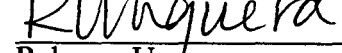
**Jennifer A. Stevens**  
**ROSKA DeWULF & PATTEN, PLC**  
**One Arizona Center**  
**400 East Van Buren Street**  
**Suite 800**  
**Phoenix, AZ 85004**

**Matt Neubert, Director**  
**Securities Division**  
**ARIZONA CORPORATION COMMISSION**  
**1300 West Washington Street**  
**Phoenix, AZ 85007**

**ERC of Chicago, LLC**  
**Attn: Guy Quinn**  
**625-D Railroad Street**  
**Montgomery, IL 60538**

**COASH & COASH, INC.**  
**Court Reporting, Video and**  
**Videoconferencing**  
**1802 North 7<sup>th</sup> Street**  
**Phoenix, AZ 85006**

**C&D Construction Services, Inc.**  
**Attn: Irma Huerta, President**  
**1520 Red Rock Street**  
**Las Vegas, NV 89146**

By:   
Rebecca Unquera  
Assistant to Marc E. Stern